

(4) Flight carrying both charter and scheduled passenger traffic (hereafter "part charter").

(c) [Reserved]

(d) The Board may issue blanket statements of authorization to foreign air carriers to conduct fifth freedom charters. The standards for issuing such blanket authorizations shall be those stated in § 212.6. The Board may revoke any authority granted under this paragraph at any time without hearing.

(e) The Board may at any time, with or without hearing, but with at least 30 days' notice require a foreign air carrier to obtain a statement of authorization before operating any charter flight. In deciding whether to impose such a requirement, the Board will consider (but not be limited to considering) whether the country of the carrier's nationality:

(1) Requires prior approval for third or fourth freedom charter flights by United States air carriers,

(2) Has, over the objection of U.S. government, denied rights of a United States air carrier guaranteed by a bilateral agreement, or

(3) Has otherwise impaired, limited, or denied the operating rights of U.S. air carriers, or engaged in unfair, discriminatory or restrictive practices with respect to air transportation services, to, from, through, or over its territory.

(f) The Board, in the interest of national security, may require the airline(s) of some countries to obtain a statement of authorization before operating any charter over U.S. territory.

[ER-1220, 46 FR 28371, May 26, 1981, as amended by ER-1247, 46 FR 47769, Sept. 30, 1981; ER-1275, 47 FR 137, Jan. 5, 1982; ER-1357, 48 FR 36447, Aug. 11, 1983]

§ 212.5 Application for authorization.

(a) Application for a statement of authorization shall be submitted on CAB Form 433 (Appendix C), except that for part charters or long-term wet leases the application may be submitted in letter form. An application for a long-term wet lease shall describe the purpose and terms of the wet lease agreement. Applications shall be submitted in three copies to the Civil Aeronautics Board, addressed to the Director, Bu-

reau of International Aviation. Upon a showing of good cause, the application may be transmitted by cablegram or telegram or may be made by telephone.

(b) A copy of the application for a long-term wet lease to a direct air carrier or direct foreign air carrier shall also be served on the Federal Aviation Administration, addressed to the Director of Flight Operations, and on each certificated air carrier that is authorized to serve the same general area in which the proposed transportation is to be performed.

(c) The application shall include documentation to establish the extent to which the country of the applicant's nationality (and, in the case of a long-term wet lease, the country of the lessee's nationality) deals with United States air carriers on the basis of reciprocity for similar flights, if such flights are not subject to a bilateral agreement and:

(1) The Board has not established that the country accords reciprocity,

(2) The Board has found reciprocity defective in the most recent prior approval application involving the country, or

(3) Changes in reciprocity have occurred since the most recent Board finding for the country in question.

(d)(1) Applications shall be filed at least 5 business days before commencement of the proposed flight, except as specified in paragraphs (d)(2) and (d)(3) of this section. Late applications may be considered by the Board upon a showing of good cause for the lateness.

(2) Applications for a part charter or for a long-term wet lease to a direct air carrier or direct foreign air carrier shall be filed at least 45 days before the date of the first proposed flight.

(3) Applications specially required under § 212.4(e) shall be filed at least 30 calendar days before the proposed flight, unless otherwise specified by the Board.

(4) Applications required by a Board order under § 212.4(f) shall be filed at least 14 calendar days before the proposed flight, unless otherwise specified by the Board.

(5) Where an application is required by more than one provision of this part

and/or order of the Board, only one application need be filed, but it must conform to the earliest applicable filing deadline.

(e)(1) Any party in interest may file a memorandum supporting or opposing an application. Three copies of each memorandum shall be filed within 7 business days after service of the application or before the date of the proposed flight, whichever is earlier. Memoranda will be considered to the extent practicable; the Board may act on an application without waiting for supporting or opposing memoranda to be filed.

(2) Each memorandum shall set forth the reasons why the applications should be granted or denied, accompanied by whatever data, including affidavits, the Board is requested to consider.

(3) A copy of each memorandum shall be served on the foreign air carrier applying for approval.

(f)(1) Unless otherwise ordered by the Board, each application and memorandum filed in response shall be available for public inspection at the Regulatory Affairs Division of the Bureau of International Aviation immediately upon filing. Notice of the filing of all applications shall be published in the Board's Weekly List of Applications Filed.

(2) Any person objecting to public disclosure of any information in an application or memorandum must state the grounds for the objection in writing. If the Board finds that disclosure of all or part of the information would adversely affect the objecting person, and that the public interest does not require disclosure, it will order that the injurious information be withheld.

(Approved by the Office of Management and Budget under control number 3024-0015)

[ER-1220, 46 FR 28371, May 26, 1981, as amended by ER-1247, 46 FR 47769, Sept. 30, 1981; ER-1275, 47 FR 137, Jan. 5, 1982; ER-1341, 48 FR 31014, July 6, 1983]

§ 212.6 Issuance of authorization.

(a) The Board will issue a statement of authorization if it finds that the proposed charter trip meets the requirements of this part and that it is in the public interest. Statements of authorization may be conditioned or limited.

(b) In determining the public interest the Board will consider (but not be limited to) the following factors.

(1) The extent to which the authority sought is covered by and consistent with bilateral agreements to which the United States is a party.

(2) The extent to which the country of the carrier's nationality (and, in the case of a long-term wet lease, the country of the lessee's nationality) deals with United States air carriers on the basis of substantial reciprocity.

(3) Whether the foreign air carrier or its agent or the charterer or its agent has previously violated the provisions of this part.

(4) Where the application concerns a long-term wet lease:

(i) Whether the foreign air carrier or its agent or the lessee (charterer) or its agent has previously violated the provisions of part 207, 208, or 218 of this chapter.

(ii) Whether, because of the nature of the arrangement and the benefits involved, the authority sought should be the subject of a bilateral agreement.

(iii) To what extent the applicant owns or controls the lessee, or is owned or controlled by the lessee.

(c) The Board will submit any denial of an authorization specifically required under § 212.4(e) to the President of the United States at least 10 days before the proposed departure. The denial will be subject to stay or disapproval by the President within 10 days after it is submitted. A shorter period for Presidential review may be specified by the Board where the application for authorization is not timely or properly filed. Denial of a late-filed application need not be submitted to the President.

(d) The Board will publish notice of its actions on applications for statements of authorization in the Status of Charter Applications attachment to the Weekly List of Applications Filed. Interested persons may upon request obtain copies of letters or endorsed forms advising applicants of action taken on their applications.

[ER-1220, 46 FR 28371, May 26, 1981, as amended by ER-1247, 46 FR 47770, Sept. 30, 1981]